

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

RAYMOND DEGARMO, No. C-11-4859 TEH (PR)

Petitioner,

ORDER TO SHOW CAUSE

v.

SECRETARY OF CALIFORNIA
DEPARTMENT OF CORRECTIONS AND
REHABILITATION, et al.

Respondents.

/ Doc. #2

Petitioner, a state prisoner incarcerated at La Palma Correctional Center in Eloy, Arizona, has filed a pro se Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2254 challenging a judgment of conviction from Contra Costa County Superior Court. Doc. #1. He also seeks leave to proceed in forma pauperis. Doc. #2.

I

According to the Petition, in May 2009, Petitioner was sentenced to six years in state prison following his conviction for assault with a deadly weapon and true findings on two enhancements.

1 Doc. #1 at 2; Doc. #3 at 6. Petitioner sought post-conviction
2 relief in the state superior and appellate courts until the
3 California Supreme Court denied his final petition on August 10,
4 2011. Doc. #3 at 2. The instant federal Petition for a Writ of
5 Habeas Corpus followed.

6 II

7 The rules governing relief under 28 U.S.C. § 2254 require
8 a person in custody pursuant to the judgment of a state court to
9 name the "state officer having custody" of him as the respondent.
10 Ortiz-Sandoval v. Gomez, 81 F.3d 891, 894 (9th Cir. 1996) (quoting
11 Rule 2(a) of the Rules Governing Habeas Corpus Cases Under Section
12 2254). This person typically is the warden of the facility in which
13 the petitioner is incarcerated. See Stanley v. California Supreme
14 Court, 21 F.3d 359, 360 (9th Cir. 1994). Failure to name the
15 petitioner's custodian as a respondent deprives federal courts of
16 personal jurisdiction, see id., but the allegations of the petition
17 are to be liberally construed when considering whether the proper
18 respondent has been named, see Belgarde v. Montana, 123 F.3d 1210,
19 1214 (9th Cir. 1997). The "state officer having custody" also may
20 include "the chief officer in charge of state penal institutions."
21 Ortiz-Sandoval, 81 F.3d at 894 (quoting Rule 2(a) advisory
22 committee's note).

23 Petitioner has named as respondents the Secretary of the
24 California Department of Corrections and Rehabilitation, and Fred
25 Figueroa, the Warden of North Fork Correctional Facility in Sayre,
26 Oklahoma, where he was incarcerated when he filed his habeas
27 petition. Since then, Petitioner has been transferred to La Palma

1 Correctional Center in Eloy, Arizona. Doc. #5. Without knowing the
2 terms of the agreement under which Petitioner was sent to Oklahoma
3 and then Arizona, the court is uncertain who is the proper
4 respondent, but either the warden of La Palma Correctional Center or
5 the Secretary of the California Department of Corrections and
6 Rehabilitation Matthew Cate should be "the state officer who has
7 custody" of Petitioner. See Rule 2(a) advisory committee's note;
8 Fed. R. Civ. P. 19(a). Accordingly, Secretary of California
9 Department of Corrections and Rehabilitation Matthew Cate is
10 properly named as the respondent in this action, see Ortiz-Sandoval,
11 81 F.3d at 896, and La Palma Correctional Center Warden Jim
12 MacDonald shall be substituted as the respondent in action in place
13 of Fred Figueroa, the warden of Petitioner's prior place of
14 incarceration, North Fork Correctional Facility. See Belgarde, 123
15 F.3d at 1214 (construing pro se habeas petitions with deference).

16 III

17 This Court may entertain a petition for a writ of habeas
18 corpus "in behalf of a person in custody pursuant to the judgment of
19 a State court only on the ground that he is in custody in violation
20 of the Constitution or laws or treaties of the United States." 28
21 U.S.C. § 2254(a). It shall "award the writ or issue an order
22 directing the respondent to show cause why the writ should not be
23 granted, unless it appears from the application that the applicant
24 or person detained is not entitled thereto." Id. § 2243.

25 Petitioner seeks federal habeas corpus relief by alleging
26 that his parole revocation violated his due process rights, and that
27 trial counsel was ineffective for failing to object to the parole
28 revocation. Doc. #1 at 6. Liberally construed, Petitioner's claims

1 appear cognizable under 28 U.S.C. § 2254 and merit an Answer from
2 Respondent. See Zichko v. Idaho, 247 F.3d 1015, 1020 (9th Cir.
3 2001) (federal courts must construe pro se petitions for writs of
4 habeas corpus liberally); see, e.g., Gagnon v. Scarpelli, 411 U.S.
5 778, 781 (1973) ("Even though the revocation of parole is not a part
6 of the criminal prosecution, we held that the loss of liberty
7 entailed is a serious deprivation requiring that the parolee be
8 accorded due process . . .").

9 IV

10 For the foregoing reasons and for good cause shown,

11 1. Petitioner's request to proceed in forma pauperis is
12 GRANTED. Doc. #2.

13 2. The Clerk shall serve by certified mail a copy of
14 this Order, the Petition and all attachments thereto (i.e., Doc. ##1
15 and 3), on Respondent and Respondent's attorney, the Attorney
16 General of the State of California. The Clerk also shall serve a
17 copy of this Order on Petitioner.

18 3. Respondent shall file with the Court and serve on
19 Petitioner, within sixty (60) days of the issuance of this Order, an
20 Answer conforming in all respects to Rule 5 of the Rules Governing
21 Section 2254 Cases, showing cause why a writ of habeas corpus should
22 not be granted. Respondent shall file with the Answer and serve on
23 Petitioner a copy of all portions of the state trial record that
24 have been transcribed previously and that are relevant to a
25 determination of the issues presented by the Petition.

26 If Petitioner wishes to respond to the Answer, he shall do
27 so by filing a Traverse with the Court and serving it on Respondent

1 within thirty (30) days of his receipt of the Answer.

2 4. In lieu of an Answer, Respondent may file a Motion to
3 Dismiss on procedural grounds, as set forth in the Advisory
4 Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases.
5 If Respondent files such a motion, Petitioner shall file with the
6 Court and serve on Respondent an Opposition or Statement of
7 Non-Opposition within thirty (30) days of receipt of the motion, and
8 Respondent shall file with the Court and serve on Petitioner a Reply
9 within fifteen (15) days of receipt of any Opposition.

10 5. Petitioner is reminded that all communications with
11 the Court must be served on Respondent by mailing a true copy of the
12 document to Respondent's counsel. Petitioner also must keep the
13 Court and all parties informed of any change of address.

14 IT IS SO ORDERED.

15 DATED 04/09/2012

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THELTON E. HENDERSON
17 United States District Judge

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